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FM AMEMBASSY SARAJEVO

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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000574

SIPDIS

EUR (JONES), EUR/SCE (FOOKS, MCGUIRE), S/WCI (WILLIAMSON, VIBUL-JOLLES), INR (MORIN), INL (CARROLL), EUR/ACE (DUNN, KEETON, TEFFT); NSC (HELGREN); OSD (BEIN); DEPARTMENT OF JUSTICE FOR OPDAT (ALEXANDRE)

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TAGS: [PGOV](#) [PREL](#) [KCRM](#) [KJUS](#) [BK](#)

SUBJECT: BOSNIA - INCREASED INTERNATIONAL COMMUNITY PRESSURE TO EXTEND MANDATE OF FOREIGN JUDGES AND PROSECUTORS

REF: SARAJEVO 505

Classified By: Ambassador Charles English for Reasons 1.4 (b) and (b)

¶1. (C) SUMMARY: As a follow-up to their lunch with High Representative Valentin Inzko (Reftel), the Quint Ambassadors met on May 5 with State Justice Minister Barisa Colak to urge him to prepare legislative amendments needed to extend the presence of international judges and prosecutors past December 2009. Colak informed the ambassadors that his ministry would prepare the amendments in a week's time for consideration by the Council of Ministers (CoM), but said the amendments would clearly spell out which kinds of cases international judicial officials could work on, and noted that his party, HDZ-BiH, would not support having internationals work on organized crime cases. All of the Quint ambassadors underscored to Colak the importance of allowing internationals to work on organized crime cases. However, divisions remain in the international community about how to approach the extension issue. After receiving a briefing about judicial issues on April 30 by State Court President Meddzida Kreso and State Prosecutor Milorad Barasin, ambassadors from several donor countries, including the UK, issued a press release unequivocally endorsing the extension. A few countries balked, including Italy, Sweden, Germany, and France. END SUMMARY.

Quint Ambassadors Demarche Colak

¶2. (C) As a follow-up to their meeting with HighRep Inzko, the Quint Ambassadors met with State Justice Minister Barisa Colak to urge him to send legislation to the Council of Ministers permitting extension of the mandate of international prosecutors and judges. The British Ambassador, in his role as spokesman for the group, stressed the shared, strong concern about maintaining the integrity and efficiency of the State Court and the State Prosecutor's Office. He said that the judiciary lies at the heart of Bosnia's Euro-Atlantic integration process and that the international community has seen a good return on the significant investment it has made in the judiciary over the years.

¶3. (C) The British Ambassador pointed out that the extension of the secondees' mandate would provide added expertise in the fight against organized crime, assist Bosnia in meeting its obligations to the International Criminal Tribunal for the former Yugoslavia (ICTY), and instill greater public confidence in the judiciary in light of political attacks

against it. He also underscored that the international community trusts Court President Kreso's and State Prosecutor Milorad Barasin's judgment, and they support the extension. He added that the High Judicial and Prosecutorial Council (HJPC) had given broad support to the initiative, and that the initiative was an urgent matter given the negative impact the uncertainty over this issue has already had on the State Court and the State Prosecutor's Office.

Colak: Yes to War Crimes, Organized Crime -- Forget About It

¶4. (C) Minister Colak told the Ambassadors that he had not yet submitted the needed legislative amendments to the CoM because he was convinced that the Registry Agreement between OHR and the Bosnian Presidency, which governs the presence of the internationals at the State Court and the State Prosecutor's Office, needed to be amended. Because OHR had disagreed with his opinion, Colak said he sought the advice of the Presidency on this matter. (Note: The Presidency, after a series of discussions, had sided with OHR. End Note) Colak then pointed out the differences of opinion regarding the extension between the HJPC and Kreso and Barasin (e.g. Kreso favors keeping international judges on appellate panels for both war crimes and organized crime; the HJPC proposed keeping international judges for war crimes only). Colak also called attention to an HJPC suggestion that internationals work at the State Court and the State Prosecutor's Office as monitors. When asked by the Ambassador about whether Kreso and Barasin would support this proposal, Colak admitted that he did not know. (Note: Kreso

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and Barasin have told us repeatedly that do not support having monitors working at their respective institutions because the monitors would not bring much value added. We agree. End Note)

¶5. (C) Colak said he had spoken at length with HDZ-BiH party leader Dragan Covic, Prime Minister Nikola Spiric, and members of Parliament about this issue. He made clear that his party would not support having internationals work on organized crime cases, and said the Alliance of Independent Social Democrats (SNSD) has said that it would reject the extension initiative altogether. Colak added that he was working diligently to secure funds for the judiciary.

Ambassadors to Colak: Organized Crime is Crucial

¶6. (C) Speaking with one voice, the Ambassadors argued that it was important to have internationals continue working on organized crime cases. The British Ambassador pressed Colak for further details about when he expects to forward the legislative amendments to the CoM and whether the language in the amendments would be broad or specific regarding the scope of an extension. Colak responded by saying that the amendments would be prepared within a week's time and that they would contain specific language to ensure that there is no room for differing interpretations. Colak also noted that he had no indication as to whether Prime Minister Spiric would place the issue on the CoM agenda expeditiously.

Kreso and Barasin Present an Alarming Picture to Donors

¶7. (U) On April 30, a few days before the meeting with Colak, State Court President Meddzida Kreso and State Prosecutor Milorad Barasin briefed ambassadors and representatives of donor countries on the state of affairs at their respective institutions. Participating missions, in addition to the U.S. Embassy, included the embassies of the Netherlands, Norway, Sweden, Italy, Austria, the Office of the High Representative, the European Commission, and the EUSR. Both Kreso and Barasin presented an alarming picture, noting that the budget cuts they are facing are hampering

normal operations, including those of the Court's Witness Support Section. They further explained that the impending departure of internationals has caused the court to reduce from 6 to 4 the number of first instance war crimes panels and from 3 to 2 the number of first instance organized crime panels. New cases can not be assigned to the internationals, and the internationals and some members of the local staff, acting on the assumption that there will be no extension, have already begun searching for jobs. Kreso and Barasin also explained that, as a result of the budget shortfalls, they can not submit requests to the HJPC to replace the internationals with nationals, nor are there funds to support implementation of the National War Crimes Strategy. Kreso and Barasin stressed that work at the Court and Prosecutor's Office would become much more difficult if the initiative to extend the secondees does not get off the ground by the end of May. They also reminded attendees of the political attacks they had been weathering.

Diplomatic Shuffling

¶8. (C) The aim of this Dutch-led meeting was to jump start support by the international community for the initiative to extend the mandate of the internationals, and more broadly speaking, support for state-level judicial institutions and the rule of law in Bosnia. The ensuing diplomatic disagreements over the text of a joint press release following the briefing, however, highlighted the divisions within the international community over the initiative. The United Kingdom, the Netherlands, Norway, Austria, Switzerland, the Office of the High Representative, and the EU Special Representative joined us in issuing a press release that unequivocally endorsed the extension. The European Commission, Sweden, and Italy decided to withhold support for the press release because they deemed it premature. They maintained that the meeting was a fact-finding mission, prompting Norway and the Netherlands to

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point out that there had been many meetings and fact-finding missions on this subject about which all donors had already been briefed. They also noted that the Swedes had funded an independent expert report that came out in strong support for the extension. The Germans declined to support the press release because they opposed explicit mention of support of the extension initiative, and as a result, decided to skip the meeting. France was nowhere in sight. Reactions to the joint press release were relatively muted.

¶9. (U) The text of the press release is as follows:

Ambassadors and representatives of donor countries to the State Prosecutor's Office and the State Court met with State Prosecutor Milorad Barasin and Court President Kreso to discuss the rule of law and the work of both of their judicial institutions. They commended the work being done by the State Prosecutor's Office and the State Court on behalf of the citizens of Bosnia and Herzegovina.

The Ambassadors of the Netherlands, Norway, Switzerland, United Kingdom, and the United States, and representatives from the Austrian Embassy, the Office of the High Representative, and the EU Special Representative, stressed their strong support for the work of Chief Prosecutor Barasin and President Kreso. They noted the vital role played by the State Prosecutor's Office and State Court in investigating and prosecuting war crimes, organize crime, corruption, and terrorism, stressing that this work is critical to the development of the rule of law and to Bosnia and Herzegovina's Euro-Atlantic aspirations.

The Ambassadors and representatives emphasized the importance of the State Prosecutor's office and the State Court receiving sufficient funding to enable them to carry out their responsibilities. They also expressed concern about

attacks on the State Prosecutor's Office and the State Court.

They underscored that attempts to undermine and discredit the work of these two institutions are unacceptable.

The Ambassadors and representatives reiterated their strong support for the request by State Court President Kreso and State Prosecutor Barasin to extend the presence of the international judges and prosecutors working at their institutions past the legislatively -mandated December 2009 deadline. They called on state-level authorities to amend existing legislation in order to permit the extension.

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